



# Maine Human Rights Commission

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## ADDENDUM TO INVESTIGATOR'S REPORT

PA12-0418

March 27, 2015

[REDACTED] (Sanford)

v.

[REDACTED] (Scarborough)

### **I. Procedural History**

Complainant's complaint alleged disability discrimination by Respondent when he went to its store to purchase a television. During the course of the investigation, the Commission raised the issue of whether Respondent's failure to provide information about the store broadcast on its display television in a fully-accessible format violated the Maine Human Rights Act ("MHRA") by failing to provide effective communication with individuals with disabilities.<sup>1</sup> The Maine Human Rights Commission ("Commission") found no reasonable grounds to believe that Complainant was discriminated against in his purchase of a television. *See* Commission Meeting Minutes, October 6, 2014. The effective communications issue was remanded for further investigation to determine whether the failure to provide store advertising information with closed captioning amounted to unlawful disability discrimination; it is the only issue addressed in this Addendum.

### **II. Respondent's Answer:**

Respondent denied that its store displays without closed captioning are discriminatory, and stated that the information contained on the video feed for its display televisions is either simultaneously provided in written form on the feed and/or also is available via other sources at the store.

### **IV. Development of Facts:**

- 1) Complainant alleged a violation of the MHRA because Respondent did not provide closed captioning on its display television feed, which it characterized as providing information about its goods and services,

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<sup>1</sup> Although Complainant did not specifically allege in his original complaint that unlawful discrimination occurred on the basis of inability to access aural information on Respondent's television display feed, under the MHRA, 5 M.R.S. § 4566(12), the Commission is granted power "[t]o do such other things as are set out in the other subchapters, and everything reasonably necessary to perform its duties under this Act." This power includes the right to bring a complaint on behalf of the Commission alleging potential violations of MHRA and its rules and regulations. 5 M.R.S. § 4611.

including pricing. Complainant contended that by not providing captioning services, Respondent denied customers with hearing loss equal access to information contained in the audio portion of the programming found on television display models in the store.

2) Respondent denied discrimination, stating:

- a. The feed displayed on the television display models in the store contains [REDACTED] advertisements, information about store product and services, such as grocery home delivery service, as well as non-[REDACTED] specific video such as movie clips or sporting event clips.
- b. Aural information on the video feed regarding store products and services is also available via other sources at the store, including in weekly sales flyers and through pricing information on the shelves and products themselves, as well as on [REDACTED].com, which is accessible to customers via an available computer in the Electronics department. There are also two screens, one at each entrance to the store, containing no aural information, but rather only written information, displaying advertising information to customers entering the store.
- c. Further, to the extent possible, the majority of the video feed which is specific to [REDACTED] is created to allow comprehension of the message being communicated visually, in addition to aurally. The content undergoes ongoing review to ensure that the video feed displayed is capable of being accessed by all of [REDACTED] customers.

3) Investigator

- a. On 3/2/2015, a site visit occurred at the [REDACTED] store in Augusta in order to investigate Respondent's claim that information contained on the in-house video feed for televisions on display was available in some other form to customers with hearing impairments. One complete cycle of the [REDACTED] video feed was observed.
- b. Approximately one half of the roughly five-minute video feed was comprised of various products that were currently on sale at the store, such as movies or electronics products. In each instance the price and details of the product being advertised were displayed in written form in addition to the accompanying aural narrative. The same information and pricing was also on paper flyers available at several locations in the store, as well as on the computer available for customer use in the Electronics department, connected to [REDACTED].com.
- c. The remaining portion of the display feed was comprised of short clips of various sporting events, outdoor recreational activities, and shots of nature, presumably used in order to demonstrate the color and resolution capability of the available televisions on display. During these segments there was also accompanying written information on the screen that tracked the narrator's limited aural comments regarding the difference in quality of various resolutions available for the display televisions. The price and product details were also available on the display signs/price tags that were attached to or alongside of each television.
- d. Although Respondent also claimed in its written submissions that information regarding other types of [REDACTED] services, such as "grocery home delivery service," was also contained on the display television feed, this information did not appear in either aural or written form on the television feed observed on the day of the site visit. A store associate was asked whether information about this service was available in some written form. Upon speaking with a manager, the associate indicated that no such

information on grocery home delivery was available in that particular store location because that service was limited to certain test areas of the country that did not yet include the Augusta store. However, there was some limited information regarding delivery services available on [REDACTED].com through use of the customer computer in the Electronics department.

## **V. Analysis and Conclusions**

- 1) The MHRA requires the Commission in this investigation to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action. More particularly, “reasonable grounds” exists when there is enough admissible evidence, or there is reason to believe that formal litigation discovery will lead to enough admissible evidence, so that there is at least an even chance of Complainant proving in court that unlawful discrimination occurred. Complainant must prove unlawful discrimination in a civil action by a “fair preponderance of the evidence.” 5 M.R.S. § 4631.
- 2) The MHRA prohibits discrimination on the basis of disability by any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation. Unlawful discrimination includes a “failure to make reasonable modifications in policies, practices or procedures, when modifications are necessary to afford the goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless, in the case of a private entity, the private entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations.” 5 M.R.S. § 4592(1)(B).
- 3) A public accommodation must provide auxiliary aids and services when necessary to ensure that individuals with disabilities are able to access their goods and services. These include closed captioning or “other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing”. 94-348 C.M.R., Chapter 7, §§ 7.17(A),(B)(1), & (C).
- 4) To establish a denial of reasonable modification by a public accommodation, Complainant must show that:
  - (1) He comes within the protections of the MHRA as a person with a disability;
  - (2) Respondent operates a public accommodation under the MHRA;
  - (3) Respondent has in effect a policy, practice, or procedure that, directly or indirectly because of Complainant’s disability, results in Complainant’s inability to access Respondent’s goods, services, facilities, privileges, advantages or accommodations;
  - (4) Complainant requested a reasonable modification in that policy, practice, or procedure which, if granted, would have afforded him access to the desired goods, services, facilities, privileges, advantages or accommodations;
  - (5) The requested modification—or a modification like it—was necessary to afford that access; and
  - (6) The Respondent nonetheless refused to modify the policy, practice, or procedure.

*See* 5 M.R.S. § 4592(1) & (1)(B); *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 307 (1<sup>st</sup> Cir. 2003).

- 5) In proving that a modification is “reasonable,” Complainant must show that, at least on the face of things, it is feasible for the public accommodation under the circumstances. *See Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1<sup>st</sup> Cir. 2001) (employment case).

- 6) Upon such a showing, Respondent must make the modification unless it proves that doing so would alter the fundamental nature of its goods, services, facilities, privileges, advantages or accommodations; would impose an undue financial burden; or that the requested modification poses a direct threat to the health or safety of others. *See* 5 M.R.S. § 4592(1) & (1)(B); *Maine Human Rights Com'n v. City of South Portland*, 508 A.2d 948, 955 (Me. 1986); *Dudley v. Hannaford Bros. Co.*, 333 F.3d at 308; *Halpern v. Wake Forest University Health Sciences*, 669 F.3d 454, 464 (4<sup>th</sup> Cir. 2012).
- 7) In this case, Complainant alleged that unlawful disability discrimination occurred when Respondent denied him a reasonable accommodation/auxiliary aid to provide closed captioning on all televisions, and the Commission further questioned whether failing to provide closed captioning of all information shown on Respondent's television displays constitutes an unlawful failure to accommodate persons with hearing loss by providing all information provided aurally in a written medium. Respondent denied that any discrimination occurred, and states that advertising information and/or other information regarding products or services found in the television feed that is not accompanied by a displayed written narrative is also readily available in other non-aural mediums at the store.
- 8) The question, then, is whether or not [REDACTED] decision not to provide closed captioning of the aural information communicated on its store's display televisions denied Complainant access to its goods and services, and whether the requested modification was necessary to allow Complainant to access Respondent's goods and services.
- 9) Complainant has not established that he was discriminated against on the basis of his disability with regard to accessing [REDACTED] goods and services displayed on the store's video feed via captioning, with reasoning as follows:
  - a) In interpreting the Americans with Disabilities Act, the Department of Justice, in explaining its corresponding rules (which are virtually identical to the Commission's Rule Chapter 7, § 7.17(C)), explained that "public accommodations that impart verbal information through soundtracks on films, video tapes, or slide shows are required to make such information accessible to persons with hearing impairments. Captioning is one means to make the information accessible to individuals with disabilities." *See* 28 C.F.R. Part 36, § 36.303, 2010 Guidance and Section by Section Analysis.
  - b) Although the Commission questioned whether providing close captioning as part of the store's video feed was required to allow Complainant to access information regarding store advertising information and other store services, it appears that the limited aural information found on the store-generated television feed regarding [REDACTED] pricing, products, or services is also provided through a variety of visual sources at the store accessible to all store customers (including flyers, two television screens near the entrances that provide solely written information, product information posted with the price tag, and the store's website accessible to all customers in the Electronics department).
  - c) Further, the vast majority of dialogue contained on the video feed was accompanied by displayed written information on the screen which contained the same information as the aural narrative, or contained no aural narrative at all, such as segments containing sporting events or nature shots.
  - d) By ensuring that the aurally-communicated information was made available through another means accessible to individuals with hearing impairments, Respondent appears to have complied with the requirements of the MHRA and the ADA.



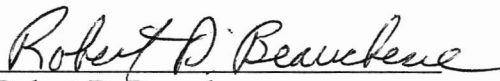
- 10) In sum, it was found that there was no information contained in the audio portion of the store video feed that was not readily available through other non-aural means for customers with hearing loss like Complainant. In this case it is found that there was no denial of access to Respondent's goods and services because of Complainant's disability due to the failure to provide closed captioning of store advertising information on the video feed.

**VI. Recommendation:**

Based upon the information contained herein, the following recommendation is made to the Maine Human Rights Commission:

- a) There are **NO REASONABLE GROUNDS** to believe that Complainant [REDACTED] was unlawfully discriminated against by Respondent [REDACTED] on the basis of physical disability with regard to the failure to provide closed captioning on the video feed for its display televisions, and;
- b) The complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).

  
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